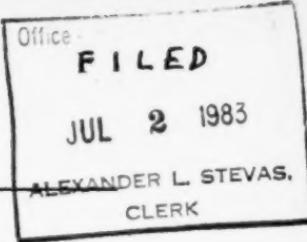


82-2158

DOCKET NO.



IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1983

BRADFORD L. WARREN,  
PETITIONER,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

---

PETITION FOR WRIT OF CERTIORARI

---

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Petitioner, Pro Se

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Questions Presented

The questions presented for determination may be briefly stated as follows:

1. May income taxes be increased other than by vote of Congress ? Especially, are tax increases constitutional when caused by inflation and without congressional or other governmental action ?
2. May elected officials, intentionally or inadvertently, insulate themselves from electoral accountability to taxpaying citizens through a mechanism of automatic, inflation-based tax increases ?
3. Do the courts of the United States have power to restrain Congress within constitutional limits ?
4. Did the United States Tax Court improperly grant Respondent's "Motion to Dismiss" ?

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Opinions in Courts Below

The opinion of the Circuit Court below entered upon April 4, 1983 is printed in an appendix to this petition, for the convenience of this Court.

The opinion of the Tax Court, as the court of first instance herein, entered upon March 11, 1981 is also printed in an appendix to this petition, for the convenience of this Court.

Grounds for Jurisdiction

The United States Court of Appeals For the Seventh Circuit issued its order in this matter, at an unknown hour, on April 4, 1983.

Section 1254 (1) of Title 28 of the United States Code is the statutory provision believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari.

Provisions Of United States  
Constitution Here Involved

Article I, Section 1:

"All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives."

Article I, Section 8, Clause 1:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;"

Article I, Section 7, Clause 1:

"All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills."

Article I, Section 7, Clause 3:

"Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill."

Fifth Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Article 3, Section 2, Clause 1:

"The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; - to all cases affecting ambassadors, other public ministers and consuls; - to all cases of admiralty and maritime jurisdiction; - to controversies to which the United States shall be a party; - to controversies between two or more states; - between a state and citizens of another state; - between citizens of different states; - between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

Article 3, Section 2, Clause 2:

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make."

Statement of Case and Material Facts

There is no substantial dispute as to the facts. The dispute is as to the conclusions of law resulting therefrom.

This matter started in the United States Tax Court where jurisdiction was based upon Section 7442 of Title 26 of the United States Code. Tax Court granted respondent's "Motion to Dismiss" for failure of petitioner to state a claim upon which relief may be granted. The United States Court of Appeals For the Seventh Circuit affirmed.

Argument

A writ of certiorari should issue in this matter for these reasons:

**GRANT OF MOTION TO DISMISS, BELOW,  
CONFLICTS WITH OPINIONS OF THIS COURT**

The opinions below are not clear as to their reasons for granting respondent's motion to dismiss this matter. They rely heavily upon their conclusion that the courts have no jurisdiction to grant relief in this matter. They may also rely, to a lesser extent, upon a supposed failure to state, or a supposed inability to be able to prove, a claim. In view of this Court's prior decisions, the grant of the motion to dismiss was error.

**1 Courts' Power to Review Issues**

Article III, Section 2 of the United States Constitution charges the courts with the judicial power of the United States. This judicial power extends to all

matters arising under the Constitution.

This Court has repeatedly and consistently held that the courts of the United States have the power to provide relief from government violations of the Constitution. Nearly one hundred years ago, this Court described its duty as the ultimate protector of the Constitution:

"... the limitations imposed by our constitutional law upon the action of the governments, both state and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government."  
Hurtado v. California, 110 U.S. 516, at 536 (1884).

Forty-eight years ago this Court elaborated on its difficult responsibili-

ties with respect to review of actions of the government:

"We approach [this] decision with a sense of our grave responsibility to render judgment in accordance with the principles established for the governance of all three branches of the Government.

"There should be no misunderstanding as to the function of this court in such a case. It is sometimes said that the court assumes a power to overrule or control the action of the people's representatives. This is a misconception. The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate the judicial branch of the Government has only one duty, -- to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment upon the question. The only power it has, if such it may be called, is the power of judgment. This court neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provi-

sions of the Constitution; and, having done that, its duty ends.

"The question is not what power the Federal Government ought to have but what powers in fact have been given by the people."

United States v. Butler, 297 U.S. 1, at 62 (1936).

Today, this Court is still passing constitutional judgment upon the actions of government. See, for example, Immigration and Naturalization Service v. Chadha, 80-1832, 80-2170, 80-2171, U. S. Law Week 4907, volume 51, #49 (June 21, 1983), striking down a "legislative veto" that had been clearly and specifically enacted by Congress and otherwise properly made into law.

There can be no doubt that the courts below have failed to properly apply the decisions of this Court with respect to their power and duty to review the constitutional issues here raised.

## 2 Test of Motion to Dismiss

This Court's view of the accepted rules for granting a motion to dismiss and for the form of pleadings required to raise constitutional issues are well settled as, for example, in Conley v. Gibson, 355 U.S. 41 (1957).

"... we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. at 45.

"... The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." Id. at 47.

## 3 Facts Admitted and Noticed

The Secretary of the Treasury has publicly admitted that inflation raises income taxes without even a law being passed. See Appellant's Brief, below, at page 12 and at appendix E.

In its opinion below, the Circuit Court essentially took judicial notice of the fact that inflation does increase income taxes. See page 3 of its opinion referring to "the ... real effects of inflation and bracket creep on the income of taxpayers" and its footnote 2 defining the "phenomenon" of bracket creep.

#### ISSUES OF FIRST IMPRESSION NEED DECISION BY THIS COURT

##### 1 Constitutional Issues Raised

Petitioner argues that increases of income tax which are caused by inflation are not constitutional. Such increases occur without vote or other direct action by government, thereby purportedly imposing such increased tax: a) other than by Congress pursuant to its tax power under Clause 1 of Section 8 of Article I of the Constitution, b) without compliance with the constitutional framework for passage

of bills by two houses of Congress and submission to the President, c) without due process of law and d) with disregard for the principle of accountability of elected representatives which is fundamental to our system of government. In short, Petitioner argues that the inflation tax is "taxation without representation", which the Constitution will not permit.

## 2 Absence of Prior Decisions

A History of Issues Herein. Taxation without representation was a major issue in the American colonies in 1776. Legal means of redress of this grievance were unavailing, so the issue was settled by the American Revolutionary War. Thereafter and until 1968, or 1971, United States money was under a statutorily fixed standard and income taxes were levied against the standard. In 1968, or 1971, Congress removed the standard. In 1972

and 1973, Congress devalued United States money, thereby, in effect, ratifying inflation tax increases for those years. Since 1973, there have been no devaluations nor other action by government to impose or ratify inflation tax increases. The constitutional issues presented to the Court here, with respect to Petitioner's 1976 income tax, did not exist until calendar year 1974.

B Absence of Cases Cited Below. This case was presented to the court below under a statutory argument and under constitutional arguments. The court below relied upon one prior case to dispose of the statutory argument. However, in disposing of the constitutional arguments below, the court specifically referred to the absence of legal authority on the issues. This was in stark contrast to the trial court's opinion below, where the Tax Court relied on some eight prior cases.

Insofar as its opinion reflects, the Circuit Court agreed with Petitioner that the constitutional issues here presented are without precedent.

To dispose of Petitioner's constitutional arguments the court below apparently relied upon its conclusion that the courts have no jurisdiction here, quoting the trial court:

"As attractive as arguments may be for indexing the federal income tax to offset the effects of inflation, all such proposals present problems of choosing the proper index and administration. Whether or not to index, what indexing standard should be applied, and resolution of the administrative problems indexing would raise are all matters within the province of the Congress, not this or any other court." Opinion below, page 3, see appendix hereto.

### 3 Other Considerations

A Current Confusion. Recently, Congress has taken up this new issue of inflation tax. They have added a provision to income tax law which would index the tax to neutralize the increases caused by

inflation.' Even as respondent has resisted Petitioner's arguments, his superiors, the Secretary of the Treasury and the President of the United States have regularly expressed their concern over the non-governmental way in which inflation raises income taxes.

Many decisions surrounding these issues are political in nature and must be resolved outside the courts. Nevertheless, here, as throughout government, the judgment of the Supreme Court is required to guide and restrain the political process within the scope of the Constitution.

The Tax Court and Circuit Court below suggest that, to take any jurisdiction here, would require judicial involvement in a political process. This is not correct. This Court's ruling would exercise its delicate and difficult office of passing constitutional judgment on the imposition of income taxes through infla-

tion. Any resulting substantive and administrative issues would be left to the wisdom of the proper authority.

B Administration of Tax Law. This Court's review of and judgment upon the constitutional effect of inflation taxes is important to the effective administration of the revenue laws. This is grounds for issuance of a writ of certiorari here. See, for example, Commissioner of Internal Revenue v. Noel's Estate, 380 U.S. 678, 85 S.Ct. 1238 (1965) and Bob Jones University v. United States, 103 S.Ct. 2017 (1983).

C Issues of Great Magnitude. The issues herein can be directly compared to issues which caused the Boston Tea Party and the American Revolutionary War. These great principles of our system of government deserve a review by this Court.

For the reasons set forth above and to obtain justice and proper application of the laws of the United States and the decisions of this Court, Petitioner prays that a writ of certiorari issue to review the decision entered below by the United States Circuit Court For the Seventh Circuit.

Respectfully submitted:

Bradford L. Warren  
Petitioner, Pro Se

Dated: July 1, 1983  
Indianapolis, Indiana

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UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604  
(Submitted February 4, 1983)\*

April 4, 1983

UNPUBLISHED ORDER  
NOT TO BE CITED  
PER CIRCUIT RULE 35

Before

Hon. WALTER J. CUMMINGS, Chief Judge  
Hon. RICHARD D. CUDAHY, Circuit Judge  
Hon. JESSE E. ESCHBACH, Circuit Judge

BRADFORD L. WARREN, }  
Petitioner-Appellant, } On Appeal from  
No. 81-1953 vs. } the Order and  
COMMISSIONER OF INTERNAL } Decision of the  
REVENUE, } United States  
Respondent-Appellee. } Tax Court

O R D E R

This is an appeal from the assessment of a \$10,591.69 deficiency in income tax for the taxable year 1976. The Tax Court dismissed taxpayer's petition for failure to state a claim upon which relief could be granted with respect to this contention that he was entitled to devalue federal reserve notes for purposes of determining his taxable income. We affirm.

I.

It is the taxpayer's contention that the federal reserve notes he received as income in 1976 cannot be valued at face value but instead can only be taxed at the rate of 29-1/2 cents per one federal reserve note. 1/ The taxpayer's argument is based upon the Par Value Modification Act, Pub. L. No. 92-268-86 Stat. 116 (31 U.S.C. Sec. 449). Since an identical argument was rejected by this Court in Birenstock v. Commissioner of Internal Revenue, 646 F.2d 1185 (7th Cir. 1981), we will only reiterate the holding of Birenstock that the Par Value Modification Act applies only to the valuation of gold certificates and not the operation of the Internal Revenue Code which measures taxable income in terms of the face value of federal reserve notes.

The appellant also contends that the failure to permit revaluation of federal reserve notes to account for inflation and bracket creep 2/ violates the Due Process clause as well as Article I, Section 8 of the Constitution which enumerates the taxing powers of Congress. In support of these propositions appellant-taxpayer cites us only the Boston Tea Party and the American Revolution in contending that the failure to, in effect, "index" the tax system constitutes taxation without representation. Despite the historical significance of these events we can find no basis for holding that Congress must affirmatively restructure the tax system to account for the unintended but real effects of inflation and bracket creep on the income of taxpayers. Here, we echo the Tax Court in this case which stated:

As attractive as arguments may be for indexing the federal income tax to offset the effects of inflation, all such proposals present problems of choosing the proper index and administration. Whether or not to index, what indexing standard should be applied, and resolution of the administrative problems indexing would raise are all matters within the province of the Congress, not this or any other court.

Warren v. Commissioner of Internal Revenue, Dkt. No. 11530-78, mem. order at 2  
(Tax Ct. Mar. 9, 1982).

For the foregoing reasons the decision of the Tax Court is

AFFIRMED.

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\* After preliminary examination of the briefs, the Court notified the parties that it had tentatively concluded that argument would not be helpful to the Court in this case. The notice provided that any party might file a 'Statement as to Need for Oral Argument.' No such statements having been filed, the appeal has been submitted on the briefs and record alone pursuant to Rule 14(f).

1/ The taxpayer derives his valuation from the following calculation:

1. One dollar = 1/42.22 ounce of gold
2. \$42.22 = one ounce of gold

3.  $\$128.2664 =$  the alleged average of the Englehard fabricated products price per ounce of gold as reported in the Wall Street Journal for various business days in 1976
4.  $\$42.22/\$128.2664 = \$0.329176 =$  the value of one federal reserve note using the gold definition
5. One dollar = 412.5 grains of silver = 1.1636 ounce of silver
6.  $\$1.1636 =$  one ounce of silver
7.  $\$4.4657 =$  the alleged average of the Englehard fabricated products price per ounce of silver during 1976
8.  $\$1.1636/\$4.4657 = \$0.260564 =$  the value of one federal reserve note using the silver definition
9.  $(\$0.329167 + \$0.260564)$  divided by 2 =  $\$0.29487 =$  the average value of one federal reserve note based upon both definitions.

Taxpayer does not identify the source of the value of silver used in step 6.

2/ Bracket creep is the phenomenon where Increases in a taxpayer's income due to inflation may push the taxpayer into a tax bracket with a higher rate resulting in a decrease in the real net income of the taxpayer.

UNITED STATES TAX COURT  
Washington, D. C.

BRADFORD L. WARREN, }  
Petitioner }  
} }  
v. } Docket No.  
} 11530-78  
} }  
COMMISSIONER OF INTERNAL }  
REVENUE, }  
Respondent. }  
}

ORDER OF DISMISSAL AND DECISION

For reasons appearing in a Memorandum  
Sur Order by Special Trial Judge Murray H.  
Falk hereto attached and served herewith,  
it is

ORDERED that respondent's motion to  
dismiss the action by reason of petitioner's  
failure to state a claim upon which  
relief may be granted is hereby granted  
and the case is dismissed. It is further

ORDERED AND DECIDED that there is a  
deficiency in petitioner's federal income  
tax for the taxable year 1976 in the  
amount of \$10,591.69.

(Signed) C. Moxley Featherston

Judge

Entered: MAR 11, 1981

UNITED STATES TAX COURT  
Washington, D. C.

BRADFORD L. WARREN, }  
Petitioner }  
} }  
v. } Docket No.  
} 11530-78  
COMMISSIONER OF INTERNAL }  
REVENUE, }  
Respondent. }

MEMORANDUM SUR ORDER

FALK, Special Trial Judge: This matter came on for hearing upon respondent's motion to dismiss the action by reason of petitioner's failure to state a claim upon which relief may be granted. See Rule 40, Tax Court Rules of Practice and Procedure. At the hearing it became apparent that no factual dispute existed. Respondent, appearing by his counsel, and petitioner, appearing pro se, agreed to final disposition of the matter on the pleadings. In addition to presenting oral arguments, both parties subsequently submitted briefs.

In computing his federal income tax liability for 1976, petitioner relied upon a definition of a dollar in terms of gold appearing at title 31 United States Code, section 449. Respondent determined a deficiency of \$10,591.69 in petitioner's 1976 federal income tax. The sole issue presented is whether federal reserve notes are to be valued otherwise than according to their face amount for purposes of determining petitioner's federal income tax liability.

Petitioner resided at Indianapolis, Indiana, at the time he filed his petition herein.

In Hatfield v. Commissioner, 68 T.C. 895 (1977), this Court stated:

By statute, it is established that Federal Reserve notes shall be legal tender for all debts, public and private, including taxes, on an equal basis with other coins and currencies of the United States. Coinage Act of 1965, tit. 1, sec. 102, Pub. L. 89-81, 79 Stat. 255, 31 U.S.C. sec. 392. The statute is well within the constitutional authority of Congress under article 1, section 8 of the U.S. Constitution. United States v. Wangrud, 533 F.2d 495 (9th Cir. 1976), cert. denied 429 U.S. 818 (1976).

The Eighth Circuit Court of Appeals has rendered an opinion consistent with our opinion in Hatfield v. Commissioner, supra. In United States v. Rifen, 577 F.2d 1111, 1112 (8th Cir. 1978), the Eighth Circuit Court stated: "Congress has declared federal reserve notes legal tender, 31 U.S.C. sec. 392, and federal reserve notes are taxable dollars." See United States v. Daly, 481 F.2d 28 (8th Cir.), cert. denied 414 U.S. 1064 (1973); United States v. Schmitz, 542 F.2d 782 (9th Cir. 1976), cert. denied 429 U.S. 1105 (1977); United States v. Wangrud, 533 F.2d 495 (9th Cir.), cert. denied 429 U.S. 818 (1976).

On at least three recent occasions, we have determined that federal reserve notes are taxable dollars at their face value

and that no adjustment downward for money devaluation is permitted. Stephens v. Commissioner, T.C. Memo. 1981-85; Leitch v. Commissioner, T.C. Memo. 1979-75, on appeal (9th Cir. June 7, 1979); Miller v. Commissioner, T.C. Memo. 1978-459. We adhere to those opinions here.

As attractive as arguments may be for indexing the federal income tax to offset the effects of inflation, all such proposals present problems of choosing the proper index and administration. Whether or not to index, what indexing standard should be applied, and resolution of the administrative problems indexing would raise are all matters within the province of the Congress, not this or any other court.

Dated: Washington, D. C.  
March 9, 1981